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Paul R. Baier

Louisiana State University Law Center, paul.baier@law.lsu.edu

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BREACH OF THE NO-STRIKE CLAUSE, SECTION 301,
AND THE AVAILABILITY OF INJUNCTIVE RELIEF

Paul R. Baier

A declared purpose of our national labor legislation is to promote an industrial environment in which the peace of the bargaining session supplants the warfare of a strike or lockout. The "structural and institutional invention of the Wagner Act" seated labor and management at the bargaining table, but "the content of the bargain . . . was to be worked out between the representatives of the two constituencies. . . ."¹ Today, the bargain's content often includes a union's promise not to strike during the term of the agreement in exchange for management's promise to arbitrate grievance disputes.² Understandably, Congress has attempted to promote this voluntary exchange, for the no-strike clause and the arbitral process provide a peaceful alternative to self-help.

Section 301(a) of the Labor-Management Relations Act³ authorizes federal district courts to entertain "suits for violation of contracts between an employer and a labor organization. . . ." The provision reflects Congress' interest in the effective enforcement of both labor and management's contract responsibilities. By establishing a forum in which to redress the breach of the bargaining agreement, particularly breach of the no-strike clause, Congress sought to assure an employer freedom from economic warfare, for without the guarantee of uninterrupted production during the term of the contract, "there is little reason why an employer would sign such a contract."⁴

In Textile Workers v. Lincoln Mills⁵ the Supreme Court construed

¹ Chayes, The Modern Corporation and the Rule of Law in The Corporation in Modern Society, 25, 42 (E.S. Mason ed. 1966).

² One study estimates that agreements to arbitrate grievance disputes can be found in 94% of all collective bargaining contracts. A. Cox & D. Bok, Cases on Labor Law 516 (6th ed. 1965).

³ 29 U.S.C. sec. 185(a) (1964). "Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

⁴ S. Rep. No. 105, 80th Cong., 1st Sess. 16 (1947).

⁵ 353 U.S. 448 (1957).

Section 301 as a congressional mandate to the federal judiciary to fashion a body of substantive law governing the breach of bargaining agreements. Section 301 was more than jurisdictional; it possessed a substantive independence of its own. In giving effect to that substantive independence, the Court has in a series of pronouncements developed a body of labor law which, in the main, facilitates the voluntary surrender of self-help.

In Charles Dowd Box Co. v. Courtney,⁶ the Court reaffirmed the earlier Lincoln Mills dictum that state courts were to exercise concurrent jurisdiction over suits arising out of breach of the collective bargaining agreement. Reviewing the legislative history of Section 301, the Court noted that "the clear implication of the entire record . . . is that the purpose of conferring jurisdiction upon the federal district courts was not to displace, but to supplement, the thoroughly considered jurisdiction of the courts of the various states over contracts made by labor organizations."⁷ However, the rights arising under the bargaining agreement are federal rights. One body of substantive law, federal law, governs the enforcement of collective bargaining agreements,⁸ whether suit is brought in state or federal courts. State law does not exist as an independent source of the rights of either an employer or his union.⁹

One case presents a complicating exception--Sinclair Ref. Co. v. Atkinson.¹⁰ Sinclair was a suit brought in a federal court by an employer seeking injunctive relief against a strike by a union over an allegedly arbitrable grievance, in violation of a no-strike agreement. Squarely facing the issue of the effect of the anti-injunction provisions of the Norris-LaGuardia Act upon the jurisdiction of federal courts under Section 301, the Court held that federal courts were barred from issuing an injunction. Concluding that an order enjoining the strike would contravene

⁶368 U.S. 502 (1962).

⁷Id. at 511. At the time of the enactment of sec. 301, unions, as unincorporated associations, were not subject to suit in a number of states because of local procedural difficulties. Section 301 was designed to eliminate such difficulties by providing a federal forum free from local procedural restraint.

⁸Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962).

⁹Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).

¹⁰370 U.S. 195 (1962).

the proscription of injunctions against strikes contained in Section 4(a)¹¹ of the Norris-LaGuardia Act, the Court affirmed the district court's dismissal "for lack of jurisdiction"¹² of the prayer for injunctive relief. Whether Section 4 is applicable in a suit brought in a state court for violation of a contract made by a labor organization, and whether there exist impediments to the free removal to a federal court of such a suit remain at issue.¹³

"Jurisdiction" is a peculiarly elusive concept. Sinclair omits any discussion of the meaning of jurisdiction; from this very silence, however, Sinclair derives its importance. As the condition precedent to acting at all, jurisdiction attaches to state and federal courts alike in Section 301 suits. After taking cognizance of the suit, a court's jurisdiction involves the power to consider the merits and render a binding decision. In this sense jurisdiction means application of rules of law to give effect to the substantive rights of the parties. A state court's exercise of jurisdiction in this sense is limited to the extent that the applicable rules of law are those fashioned by the federal judiciary. Assuming for the moment that rights arising under the bargaining agreement and remedies available effectuating those rights are not coterminous, issuance of an order restraining a strike in breach of a no-strike clause is an exercise of jurisdiction in still another sense. An employer seeking injunctive relief must invoke the exercise of equity jurisdiction--that "bundle of sound principles of decision concerning particular kinds of relief."¹⁴ Jurisdiction here consists of authority to redress irreparable harm with specific relief. Rather than a power to act in the first instance--a power to take cognizance of the suit--equity jurisdiction involves the subsequent determination whether the case merits a peculiar kind of relief.

The conceptual difficulty immediately confronts a district court upon

¹¹29 U.S.C. sec. 104 (1964). "No court of the United States shall have jurisdiction to issue any restraining order or . . . injunction" in a labor dispute to "prohibit any person or persons . . . from . . . (a) ceasing or refusing to perform any work. . . ."

¹²370 U.S. at 215. Neither the Supreme Court nor the district court, 187 F. Supp. 225 (N.D. Ind. 1960), discussed the meaning of jurisdiction. In Atkinson v. Sinclair Ref. Co., 370 U.S. 238 (1962), the Court sustained the district court's refusal to dismiss the accompanying claim for damages.

¹³The issues were noted in Dowd Box Co., 368 U.S. at 491 n. 8, but the Court expressly refrained from intimating any view.

¹⁴2. Chafee, Some Problems of Equity 304 (1950).

defendant union's petition for removal of an action brought initially in a state court by an employer seeking injunctive relief against a strike in breach of a no-strike clause. The Removal Act¹⁵ establishes two prerequisites: the district court must possess original jurisdiction of the action, and the claim or right asserted must arise under the laws of the United States.

In such a suit, Avco Corp. v. Aero Lodge 735, Machinists,¹⁶ the union petitioned for removal after the state court had issued a temporary injunction.¹⁷ Upon removal, the union moved to dissolve the injunction and dismiss the action, alleging that the district court had no jurisdiction to issue the injunction by reason of the Norris-LaGuardia Act. The employer moved to remand arguing that the complaint was founded solely upon breach of a contract arising under state law.¹⁸ The district court dissolved the injunction, refused to dismiss, and denied the motion to remand. It held that its original jurisdiction was not impaired for the purposes of awarding other relief merely because a prohibited labor injunction was among the remedies sought.¹⁹ The Court of Appeals affirmed,

¹⁵28 U.S.C. sec. 1441(b) (1964).

¹⁶376 F.2d 337 (6th Cir. 1967), cert. granted, 88 S. Ct. 103 (1967).

¹⁷Although some states have anti-injunction statutes modeled after the Norris-LaGuardia Act, Tennessee has no such legislative prohibition. See Aaron, Labor-Injunctions in the State Courts Part I, 50 Va. L. Rev. 951, 953 n.7 (1964).

¹⁸Avco's theory that its claim arose under state law, independent of sec. 301, had been accepted by the Third Circuit in American Dredging v. Local 25, Operating Eng'rs, 338 F.2d 837 (3d Cir. 1964), cert. denied, 380 U.S. 935 (1965). Removal was held unavailable and the district court's order denying the employer's motion to remand was reversed. In the instant case, the Sixth Circuit met Avco's reliance upon American Dredging by refusing to follow its "basic premise": "State law does not exist as an independent source of private rights to enforce collective bargaining contracts." 376 F.2d at 340. This rejection of Avco's theory appears correct. An employer's failure to mention sec. 301 in his complaint should not alter the fact that the action arises under federal law. Any contention that the rights asserted are state rights contravenes existing federal substantive pre-emption in actions based upon breach of a collective bargaining agreement. See note 9 supra. This Comment, therefore, confines itself to the second prerequisite--whether the district court possesses original jurisdiction of an action seeking injunctive relief.

¹⁹In addition to the injunction, Avco had sought "general relief." 376 F.2d at 339.

holding that Section 4 of the Norris-LaGuardia Act does not deprive a federal court of original jurisdiction within the meaning of the Removal Act. The Sixth Circuit reasoned that "jurisdiction" does not have the same meaning in Section 4 as it has in both the Removal Act and Section 301. In support of its conclusion the court relied upon Professor Chaffee's analysis²⁰ of "jurisdiction" as used in Section 4. The court noted: "The loss of the power to grant certain equitable remedies does not mean Federal Courts have lost jurisdiction over the subject matter or parties."²¹

Narrowly read, Sinclair demands only that the district court dismiss, for lack of jurisdiction, that count requesting injunctive relief. Arguably, the district court retains the power to adjudicate the substance of the litigation and award other appropriate relief. The language of Section 4 speaks not of jurisdiction in the sense of power to take cognizance of a suit; rather, the prohibition is addressed to the court's authority to award a specific form of relief--jurisdiction to issue an injunction. Section 7 of the same Act²² enables a federal court to issue an injunction after finding that certain compelling circumstances exist. If the reference to jurisdiction in Section 4 is read as a lack of power to entertain an employer's action, the exception of Section 7 seems justifiable only if the power to entertain the action attaches after the hearing of testimony, cross-examination, and a finding of specific facts. Since "jurisdiction, in the true sense, either attaches at the beginning of a case or not at all,"²³ the view that the proscription of Section 4 embraces the power to entertain the suit would appear unacceptable.

An interpretation of Sinclair's unelaborated reference to jurisdiction necessitates determining whether the right asserted is coextensive with

²⁰ Z. Chaffee, supra note 14, at 368. In commenting upon *United States v. United Mine Workers*, 330 U.S. 258 (1947), Chaffee noted: "(T)he Justices took it for granted that 'no court shall have jurisdiction . . . ' meant 'no court shall have power . . . ' yet clearly the District Judge had jurisdiction over the parties, and . . . over the subject matter. The District Court did have the power to decide labor disputes, and it could at least award damages for acts which . . . were not to be enjoined. (T)he Act says, in effect, 'no court shall have equity jurisdiction . . . ' and lack of equity jurisdiction . . . is not lack of power."

²¹ 376 F.2d at 341.

²² 29 U.S.C. sec. 107 (1964).

²³ Z. Chaffee, supra note 14, at 371.

the relief requested. Were there but one count, a count requesting injunctive relief, the contention that Section 4 deprives the court of an authority to entertain the action is more appealing. To argue that the court can entertain the action and then rule that, although the case has merit, the court is without judicial power to award the requested relief is "to give sanction to an exercise in futility."²⁴ The contention that removal would prove futile presupposes that breach of the bargaining agreement produces separate causes of action, each coterminous with the relief requested. A prayer for injunctive relief alone would thereby present a separate and independent claim, necessitating an equally independent determination of jurisdictional requirements.

This position, however, is subject to criticism. First, it would seem that the breach produces but one wrong and is more rationally viewed as giving rise to a "single cause of action for which any number of different remedies (are) available."²⁵ Further, an action seeking damages²⁶ or an order compelling arbitration,²⁷ unaccompanied by a demand for injunctive relief, could encounter no objection to removal. Nor should the fact that the complaint is cast seeking only injunctive relief impair the district court's ability to deal with the litigation, particularly since the court is empowered to award other forms of relief, whether or not demanded in the complaint.²⁸ Moreover, considering the

²⁴ American Dredging v. Local 25, Operating Eng'rs, 338 F.2d 837, 842 (3d Cir. 1964), cert. denied, 380 U.S. 935 (1965). Accord, Castle & Cooke Terminals, Ltd. v. Local 137, Longshoremen, 110 F. Supp. 247, 251 (D. Hawaii 1953), noting "the absurdity of a case which 'may be brought' in a federal District Court in which there is no power to give the relief demanded. . . ."

²⁵ Avco Corp. v. Aero Lodge 735, Machinists, 376 F.2d 337, 341 (6th Cir. 1967), cert. granted, 88 S. Ct. 103 (1967). Language in American Dredging supports the position, 338 F. 2d at 849. However, the ultimate ratio decidendi of American Dredging was that the demand for injunctive relief presented a separate and independent claim.

²⁶ See note 12 supra.

²⁷ Should an allegedly aggrieved union strike in violation of a no-strike provision, disregarding an existing procedure calling for arbitration of the dispute, the district court has jurisdiction to issue an order compelling arbitration of the dispute. See Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 214 (1962).

²⁸ Fed. R. Civ. P. 54(c). But cf. Fed. R. Civ. P. 82 (the rules shall not be construed to extend the court's jurisdiction).

request for relief as determinative would contravene the view that "the prayer for relief is not part of the cause of action and should not be considered in determining whether such cause of action is 'separate and independent'".²⁹

Refined argument would appear to dictate that removal is appropriate.³⁰ However, with considerable assurance it can be predicted that legal refinement will not control the disposition of the removal issue in the Supreme Court. The approach of the Third Circuit in American Dredging v. Local 25, Operating Eng'rs³¹ is instructive. The court read Sinclair's reference to jurisdiction as embracing subject matter jurisdiction and denied removal.³² Although American Dredging is subject to criticism on other grounds,³² the court enunciated what is likely to be the ratio decidendi of the removal issue--a consideration of the consequences of allowing removal. The court noted that removal would, in effect, "sound the death-knell" of the state court's jurisdiction over the action, depriving the employer of a permanent injunction available under state law; it would also make the congressional purpose underlying Section 301, a section designed to supplement rather than to displace existing state court jurisdiction, a "co-victim" with the employer.³³

At first glance the view of the dissenting justice in American Dredging appears startling: "I think that the question of removability affects no substantive issue here. . . ."³⁴ However, the majority's elaboration of consequences presupposes an existing disparity between the availability of injunctive relief in state and federal courts. Were Sinclair read, however, as precluding the issuance of injunctive relief in state courts, removal would not deprive the employer of an injunction, and no serious consequences would result. The dissent adopts this rationale.

In the first instance the "transcending question" is not the issue of

²⁹ American Dredging v. Local 25, Operating Eng'rs, 338 F.2d 837, 849 (3d Cir. 1964), cert. denied, 380 U.S. 935 (1965).

³⁰ See Aaron, Strikes in Breach of Collective Bargaining Agreements: Some Unanswered Questions, 63 Colum. L. Rev. 1027, 1046-51 (1963). (Hereinafter cited as Aaron).

³¹ 338 F.2d 837 (3d Cir. 1964), cert. denied, 380 U.S. 935 (1965).

³² See note 18 supra.

³³ 338 F.2d at 843-48.

³⁴ Id. at 858 (dissenting opinion).

removal. Rather, the import of Sinclair's silence reappears.

Sinclair makes no reference to state courts--indeed, it explicitly confines its holding to federal courts.³⁵ However, in giving effect to the substantive independence of Section 301, the Court has held that uniform doctrines of federal labor law are to govern actions based upon breach of a collective bargaining agreement.³⁶ Although state courts retain jurisdiction in Section 301 cases, they must apply federal law; and, presumably, the expressed federal interest in uniformity would preclude the state court's resort to incompatible state law.³⁷ If states remain free to apply injunctive remedies against strikes in breach of contract, "the development of a uniform body of federal law is in for hard times."³⁸ The reference is to forum shopping. Suits for violation of a no-strike clause would be brought in state courts, conferring upon state courts, in the first instance, the responsibility of fashioning a uniform body of federal substantive law. As many state courts "have not proven themselves hospitable to, or even aware of, national labor policy," the Supreme Court would "bear the burden of fashioning and enforcing this segment of federal law, unaided by the instructive opinions of the lower federal courts."³⁹ The forum shopping itself would continue beyond an initial preference for state courts, turning upon which states have anti-injunction statutes and how they construe them.⁴⁰ Given the expressed interest in uniformity, and assuming the continuing validity of Sinclair, the view that Sinclair should be read to preclude state court injunctive relief is compelling.⁴¹

³⁵ 370 U.S. at 214.

³⁶ Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962).

³⁷ See Avco Corp. v. Aero Lodge 735, Machinists, 376 F.2d 337, 343 (6th Cir. 1967), cert. granted, 88 S. Ct. 103 (1967) (dictum); accord. American Dredging v. Local 25, Operating Eng'rs, 338 F.2d 837, 857 (3d Cir. 1964), cert. denied, 380 U.S. 935 (1965) (dissenting opinion).

³⁸ Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 236 (dissenting opinion).

³⁹ Summers, Labor Law Decisions of Supreme Court, 1961 Term, ABA Section of Labor Relations 51, 63 (1962), cited in Aaron, at 1034.

⁴⁰ Compare Shaw Elec. Co. v. Int'l Bhd. of Electrical Workers, 418 Pa. 1, 208 A.2d 769 (1965), with Tidewater Express Lines v. Freight Drivers Union, 230 Md. 450, 187 A.2d 685 (1963).

⁴¹ See Aaron, supra note 30, at 1135.

Such a view is not without supporting argument . "(T)he right not to be enjoined under the Norris-LaGuardia Act . . . is a part of the federal right--a part and parcel of the rights which may be exercised with reference to bargaining agreements."⁴² As the injunctive remedy has a very substantial impact upon the interests of the parties, an impact totally different from alternative forms of relief, an award of injunctive relief should be regarded as a separate right.⁴³ Were state courts free to provide injunctions, the substantive rights of the parties would differ in the two available forums--forums supposedly applying uniform law.

Whether the Court will extend Sinclair to include state as well as federal forums is questionable. Although the interest in uniformity is important, the argument which seeks to deny state injunctive relief is too readily repudiated. "Of course Norris-LaGuardia is 'federal law,' and 'federal law' controls. But to settle the question so simple comes close to adjudication by pun."⁴⁴ The Norris-LaGuardia Act by its own terms is confined to federal courts, and any search for a national policy favoring the proscription of state injunctive relief proves abortive. A rule that would foreclose state injunctive remedies would give "altogether too ironic a twist" to legislative intent, leaving an employer in a worse position than he was in before the enactment of Section 301.⁴⁵ Therefore, it would appear that Sinclair, rather than enunciating any federal law applicable in Section 301 suits, merely reaffirms the lack of power of federal courts alone to award injunctive relief. A contrary interpretation would violate the Lincoln Mills directive⁴⁶ that national labor policies are to guide the judiciary's fashioning of federal labor law. Since the paramount policy is an interest in the effective enforcement of collective bargaining agreements, states should remain free to award injunctive relief.

Adopting the conclusion that Sinclair should not be read to embrace

⁴²McCarroll v. Los Angeles County District of Carpenters, 49 Cal.2d 45, 73-4, 315 P.2d 322, 338 (1957), cert. denied, 355 U.S. 932 (1958) (dissenting opinion).

⁴³See Aaron, *supra* note 30, at 1035.

⁴⁴Lesnick, State-Court Injunctions and the Federal Common Law of Labor Contracts: Beyond Norris-LaGuardia, 79 Harv. L. Rev. 757, 758 (1966).

⁴⁵McCarroll v. Los Angeles County District of Carpenters, 49 Cal. 2d 45, 63-4, 315 P.2d 322, 332 (1957) cert. denied, 355 U.S. 932 (1958).

⁴⁶353 U.S. 448, 456 (1957).

state courts, what then is the appropriate disposition of the removal issue? Were the Court to affirm Avco, it would, in effect, emasculate state equitable relief; and, without a concurrent willingness to foreclose the availability of state injunctive relief, the Court is unlikely to affirm. Admittedly, a denial of removal would involve something less than complete intellectual honesty, since the conditions of removal appear satisfied and there exists no provision in the Removal Act necessitating an examination of the consequences of permitting removal. Nevertheless, in the interest of effective enforcement of bargaining agreements, the Court should reverse Avco and deny removal. Any search for a more palatable disposition is likely to prove frustrating.

That Sinclair necessitates sacrificing an interest in uniformity is unfortunate. The case should be overruled. Sinclair's rationale that Congress, rather than the Court, should resolve any conflict between Section 4 and the interest in effective enforcement of labor contracts preserves the status quo in a politically sensitive area unlikely to yield a successful legislative response. Moreover, such an approach seems inconsistent with the creative role the Court readily accepted in Lincoln Mills. Because the issue was politically sensitive, the Court demanded more than the cloudy and confusing record that accompanied Section 301's enactment. However, in an area filled with political sensitivities, legislative ambiguity is often deliberate, in the hope that the judiciary will accommodate apparently conflicting statutes and shape a rule that will best effectuate the purposes of each. The Court, nevertheless, repudiated arguments in support of an accommodation. In his dissent, Mr. Justice Brennan underscored the majority's principal failure: "(E)mployers will pause long before committing themselves to obligations enforceable against them but not against their unions."⁴⁷ Section 301 acknowledged the importance of assuring an employer's willingness to defer to the arbitral process. Sinclair serves only to disrupt that willingness.

To the extent that the Court is unwilling to repudiate Sinclair, it should carefully confine the case to the injunctive power of a district court in a suit brought to enjoin a strike in breach of a no-strike provision. An injunction should issue, however, pursuant to an arbitrator's award which itself contains an order forbidding the strike.

Should an allegedly aggrieved union strike in violation of a no-strike provision, disregarding an existing procedure calling for arbitration of the dispute, an employer has the right to obtain a district court order compelling arbitration of the dispute. If the arbitrator sustains the

⁴⁷ Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 227 (1962) (dissenting opinion).

employer's position, his award might include an order that the union cease striking.⁴⁸ District court enforcement of the award, however, would necessarily involve enjoining a strike--having come full circle, the proscriptions of Section 4 reappear, strengthened by Sinclair's literal approach. However, arguments supporting the issuance of an injunction pursuant to an arbitrator's award are persuasive. After the careful formulation of a procedure for settling disputes without resort to economic self-help, a strike in disregard of that procedure and in breach of a no-strike clause should not lightly be condoned.⁴⁹

To provide an employer with an order compelling his union to arbitrate without the court also expressing a willingness to enforce the award would provide the employer with but an empty right. After a full hearing on the merits by one voluntarily chosen by the parties, were the arbitrator to conclude that the only effective remedy is an award forbidding the strike, a refusal to enforce the award would contravene the doctrine that the district court is to respect the remedy deemed appropriate by the arbitrator, so long as the ordered remedy appears within the scope of his authority.⁵⁰ If it is assumed that, after bargaining over the scope of an arbitrator's authority, both union and management agreed that such authority would include a power to enjoin strikes or lockouts, it makes little sense for a court to refuse to enforce the award. As the authority of the arbitrator derives solely from the consent of the parties, his authority is not subject to the same abuse as that which prompted the enactment of the Norris-LaGuardia Act. Section 4 was designed to eliminate unrestrained judicial condemnation of strikes. Here, however, the court would merely be enforcing the order of an arbitrator upon whom the parties expressly conferred the power to enjoin a strike. Nor need the court involve itself with a determination of the unlawfulness of the strike, for that determination has already been made after a full hearing on the merits in an extrajudicial forum.

In Ruppert v. Egelhofer,⁵¹ the New York Court of Appeals unanimously affirmed the power of an arbitrator to enjoin a strike. Although the

⁴⁸ See United Parcel Service, 41 Lab. Arb. 560 (1963).

⁴⁹ "Indeed, it is difficult to envision any action or activity more likely to reduce a labor agreement to a worthless scrap of paper. . . ." United Parcel Service, 41 Lab. Arb. 560 (1963).

⁵⁰ United Steel Workers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

⁵¹ 3 N.Y.2d 575, 143 N.E.2d 129 (1958).

agreement did not expressly confer injunctive power upon the arbitrator the court inferred the existence of such power within his authority, reasoning that only an injunction would effectuate the parties' intent. In response to the union's contention that New York's anti-injunction statute (Section 876-a) precluded specific enforcement of the award enjoining a strike, the court stated: "Section 876-a and article 84 (arbitration) . . . each represents a separate public policy and by affirming here we harmonize those two policies."⁵² Admittedly, Ruppert antedates Sinclair, and it must be noted that the New York Court of Appeals' approach, harmonizing conflicting policies, squarely conflicts with the rationale of Sinclair--namely, existing conflicts in legislative pronouncements are to be resolved by Congress rather than by the courts. Nevertheless, there is room for distinction. In the interest of protecting an employer's willingness to defer to arbitration,⁵³ injunctive relief should be available pursuant to an arbitrator's award. A contrary result would only compound the error of Sinclair, endangering the very scheme the Court has so carefully protected--the substitution of the arbitral process for the strife of self-help.

⁵²Id. at 582, 148 N.E.2d at 131.

⁵³In International Longshoreman Local 1291 v. Philadelphia Marine Trade Ass'n, 88 S. Ct. 201 (1967), the Supreme Court avoided an opportunity to extend Sinclair so as to foreclose issuance of an injunction pursuant to an arbitrator's award. The Third Circuit had held that sec. 4 did not preclude the district court's order specifically enforcing the award. The Court reversed on the procedural ground that the district court's order failed to comply with Rule 65(d). The fact that the Court did not reaffirm Sinclair and the careful avoidance of the issue, although fully argued and briefed, arguably supports an inference that the Court is willing to limit Sinclair.